

AMENDED IN ASSEMBLY JULY 23, 2004

AMENDED IN ASSEMBLY JULY 8, 2004

AMENDED IN ASSEMBLY JUNE 14, 2004

SENATE BILL

No. 1547

Introduced by Senator Figueroa

February 19, 2004

An act to amend Sections 144, 6710, 6714, 6799, 8710, and 8805 of, to add Sections 6750.5, 6780, 6796.4, 8740.5, 8785, and 8802.3 to, and to add Article 4.5 (commencing with Section 6770) to Chapter 7 of Division 3 of, and Article 5.7 (commencing with Section 8776) to Chapter 15 of Division 3 of, the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1547, as amended, Figueroa. Professional Engineers and Land Surveyors.

Existing law, the Professional Engineers Act, creates the Board for Professional Engineers and Land Surveyors in the Department of Consumer Affairs, and makes it responsible for the registration and the regulation of those engaged in the practice of engineering and land surveying. Under the act, the board is required to appoint an executive officer. Existing law makes these provisions of the act creating the board and appointing an executive officer inoperative on July 1, 2005, and repeals them on January 1, 2006. Under existing law, revenue received by the board is deposited into the Professional Engineer's and Land Surveyor's Fund, which is continuously appropriated. Existing law makes the violation of the provisions regulating professional engineers and land surveyors a crime.

This bill would extend the provisions relating to the board and its executive officer to July 1, 2006, and would change their repeal dates to January 1, 2007. The bill would authorize the board, on and after ~~January funds become available or July 1, 2007–2006~~, to obtain and review criminal history information for an applicant for registration as a professional engineer, certification as an engineer-in-training or land surveyor-in-training, and licensure as a land surveyor and for renewal of the registration, certification, or license, if funds are appropriated for that purpose in the annual Budget Act and sufficient hiring authority is granted to the board for that purpose. The bill would require the applicant to pay a specified fee for this criminal information check. Because the fee would be deposited into the Professional Engineer's and Land Surveyor's Fund, which is continuously appropriated, the bill would make an appropriation.

This bill would require a licensee to report, as specified, to the board a felony conviction and a civil judgment, settlement, arbitration award, or administrative action award of \$50,000 or more, occurring on or after ~~January 1, 2007~~ July 1, 2006, if funds are appropriated for that purpose in the annual Budget Act and sufficient hiring authority is granted to the board for that purpose. The bill would also require a court rendering the judgment or conviction and a local agency, if self-insured, to report the matter to the board. The bill would authorize a petition for review of disciplinary action taken by the board.

Because the bill would increase the duties of a local agency by requiring them to report certain information to the board, it would impose a state-mandated local program. Because the bill would specify additional reporting requirements for engineers and land surveyors, the violation of which would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, the bill would provide that, if the Commission on State Mandates determines that the bill contains costs



so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would incorporate additional changes to Section 144 of the Business and Professions Code, contingent upon the prior enactment of SB 1915.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 144 of the Business and Professions
- 2 Code is amended to read:
- 3 144. (a) Notwithstanding any other provision of law, an
- 4 agency designated in subdivision (b) shall require an applicant to
- 5 furnish to the agency a full set of fingerprints for purposes of
- 6 conducting criminal history record checks. Any agency
- 7 designated in subdivision (b) may obtain and receive, at its
- 8 discretion, criminal history information from the Department of
- 9 Justice and the United States Federal Bureau of Investigation.
- 10 (b) Subdivision (a) applies to the following:
- 11 (1) California Board of Accountancy.
- 12 (2) State Athletic Commission.
- 13 (3) Board of Behavioral Sciences.
- 14 (4) Court Reporters Board of California.
- 15 (5) State Board of Guide Dogs for the Blind.
- 16 (6) California State Board of Pharmacy.
- 17 (7) Board of Registered Nursing.
- 18 (8) Veterinary Medical Board.
- 19 (9) Registered Veterinary Technician Committee.
- 20 (10) Board of Vocational Nursing and Psychiatric Technicians.
- 21 (11) Respiratory Care Board of California.
- 22 (12) Hearing Aid Dispensers Advisory Commission.
- 23 (13) Physical Therapy Board of California.
- 24 (14) Physician Assistant Committee of the Medical Board of
- 25 California.
- 26 (15) Speech-Language Pathology and Audiology Board.
- 27 (16) Medical Board of California.
- 28 (17) State Board of Optometry.
- 29 (18) Acupuncture Board.
- 30 (19) Cemetery and Funeral Bureau.

- 1 (20) Bureau of Security and Investigative Services.
- 2 (21) Division of Investigation.
- 3 (22) Board of Psychology.
- 4 (23) The California Board of Occupational Therapy.
- 5 (24) Structural Pest Control Board.
- 6 (25) Contractors' State License Board.
- 7 (26) Bureau of Naturopathic Medicine.
- 8 (27) Board for Professional Engineers and Land Surveyors.

9 (c) The provisions of paragraphs (24) and (25) of subdivision
10 (b) shall become operative on July 1, 2004. *The provisions of*
11 *paragraph (27) of subdivision (b) shall become operative on the*
12 *date on which sufficient funds are available for the Board of*
13 *Professional Engineers and Land Surveyors and the Department*
14 *of Justice to conduct a criminal history record check pursuant to*
15 *this section or on July 1, 2006, whichever occurs first.*

16 SEC. 1.5. Section 144 of the Business and Professions Code
17 is amended to read:

18 144. (a) Notwithstanding any other provision of law, an
19 agency designated in subdivision (b) shall require an applicant to
20 furnish to the agency a full set of fingerprints for purposes of
21 conducting criminal history record checks. Any agency
22 designated in subdivision (b) may obtain and receive, at its
23 discretion, criminal history information from the Department of
24 Justice and the United States Federal Bureau of Investigation.

25 (b) Subdivision (a) applies to the following:

- 26 (1) California Board of Accountancy.
- 27 (2) State Athletic Commission.
- 28 (3) Board of Behavioral Sciences.
- 29 (4) Court Reporters Board of California.
- 30 (5) State Board of Guide Dogs for the Blind.
- 31 (6) California State Board of Pharmacy.
- 32 (7) Board of Registered Nursing.
- 33 (8) Veterinary Medical Board.
- 34 (9) Registered Veterinary Technician Committee.
- 35 (10) Board of Vocational Nursing and Psychiatric Technicians.
- 36 (11) Respiratory Care Board of California.
- 37 (12) Hearing Aid Dispensers Advisory Commission.
- 38 (13) Physical Therapy Board of California.
- 39 (14) Physician Assistant Committee of the Medical Board of
40 California.

1 (15) Speech-Language Pathology and Audiology Board.

2 (16) Medical Board of California.

3 (17) State Board of Optometry.

4 (18) Acupuncture Board.

5 (19) Cemetery and Funeral Bureau.

6 (20) Bureau of Security and Investigative Services.

7 (21) Division of Investigation.

8 (22) Board of Psychology.

9 (23) The California Board of Occupational Therapy.

10 (24) Structural Pest Control Board.

11 (25) Contractors' State License Board.

12 (26) Bureau of Naturopathic Medicine.

13 (27) Board for Professional Engineers and Land Surveyors.

14 (c) The provisions of paragraph (24) of subdivision (b) shall
15 become operative on July 1, 2004. The provisions of paragraph
16 (25) of subdivision (b) shall become operative on the date on
17 which sufficient funds are available for the Contractors' State
18 License Board and the Department of Justice to conduct a criminal
19 history record check pursuant to this section or on July 1, 2005,
20 whichever occurs first. *The provisions of paragraph (27) of*
21 *subdivision (b) shall become operative on the date on which*
22 *sufficient funds are available for the Board of Professional*
23 *Engineers and Land Surveyors and the Department of Justice to*
24 *conduct a criminal history record check pursuant to this section or*
25 *on July 1, 2006, whichever occurs first.*

26 SEC. 2. Section 6710 of the Business and Professions Code
27 is amended to read:

28 6710. (a) There is in the Department of Consumer Affairs a
29 Board for Professional Engineers and Land Surveyors, which
30 consists of 13 members.

31 (b) Any reference in any law or regulation to the Board of
32 Registration for Professional Engineers and Land Surveyors is
33 deemed to refer to the Board for Professional Engineers and Land
34 Surveyors.

35 (c) This section shall become inoperative on July 1, 2006, and,
36 as of January 1, 2007, is repealed, unless a later enacted statute,
37 that becomes effective on or before January 1, 2007, deletes or
38 extends the dates on which it becomes inoperative and is repealed.
39 The repeal of this section renders the board subject to the review
40 required by Division 1.2 (commencing with Section 473). The

1 board shall not be required to prepare an analysis and submit a
2 report pursuant to Section 473.2.

3 SEC. 3. Section 6714 of the Business and Professions Code
4 is amended to read:

5 6714. The board shall appoint an executive officer at a salary
6 to be fixed and determined by the board with the approval of the
7 Director of Finance.

8 This section shall become inoperative on July 1, 2006, and, as
9 of January 1, 2007, is repealed, unless a later enacted statute, that
10 becomes effective on or before January 1, 2007, deletes or extends
11 the dates on which it becomes inoperative and is repealed.

12 SEC. 4. Section 6750.5 is added to the Business and
13 Professions Code, to read:

14 6750.5. (a) The board shall have the authority to obtain and
15 review criminal history information to determine whether an
16 applicant has been convicted of any offense.

17 (b) Each applicant for certification as an engineer-in-training
18 or licensure as a professional engineer shall, at the time of
19 application, furnish a full set of fingerprints for the purposes of
20 conducting a criminal history information check. The board shall
21 use the fingerprints furnished by the applicant to obtain criminal
22 history information on the applicant from the Department of
23 Justice and the United States Federal Bureau of Investigation,
24 including any available subsequent arrest information.

25 (c) (1) An applicant residing in the state shall submit his or her
26 fingerprints through the electronic format certified by the
27 Department of Justice. With the approval of the executive officer,
28 the applicant may submit his or her fingerprints on two classifiable
29 fingerprint cards.

30 (2) An applicant residing outside the state may submit his or her
31 fingerprints using the electronic format certified by the
32 Department of Justice. The applicant may also submit his or her
33 fingerprints on two classifiable fingerprint cards.

34 (3) If the applicant submits his or her fingerprints on
35 classifiable fingerprint cards, the applicant shall also submit the
36 fingerprint processing fee to the board. The fingerprint processing
37 fee is that amount charged the board by the Department of Justice.

38 (4) If the applicant submits his or her fingerprints through the
39 electronic format certified by the Department of Justice, the
40 applicant shall pay the fingerprint processing fee as directed by the



1 enforcement agency operating the electronic system on behalf of
2 the Department of Justice.

3 (d) No application shall be processed if the applicant fails to
4 submit fingerprints as required by this section. However, if an
5 applicant has already submitted fingerprints with a previous
6 application, as provided in this section or Section 8740.5, or with
7 the renewal of a certificate or license, as provided in Section
8 6796.4 or 8802.3, the applicant shall not be required to submit
9 fingerprints with any subsequent application.

10 (e) Notwithstanding any other provision of law, the results of
11 any criminal history information check by either state or federal
12 law enforcement authorities shall not be released by the board
13 except in accordance with state and federal requirements.

14 (f) This section shall apply to all applications, including those
15 applications submitted pursuant to Sections 6758, 6759, and 6763,
16 submitted on or after ~~January 1, 2007~~ *July 1, 2006*.

17 (g) This section shall become operative only if an appropriation
18 is made from the Professional Engineer's and Land Surveyor's
19 Fund for the 2006–07 fiscal year in the annual Budget Act to fund
20 the activities of this section, and sufficient hiring authority is
21 granted to the board pursuant to a budget change proposal to
22 provide staffing to implement this section.

23 SEC. 5. Article 4.5 (commencing with Section 6770) is added
24 to Chapter 7 of Division 3 of the Business and Professions Code,
25 to read:

26
27 Article 4.5. Reporting Requirements
28

29 6770. (a) A licensee shall report to the board in writing the
30 occurrence of any of the following events that occurred on or after
31 ~~January 1, 2007~~ *July 1, 2006*, within 90 days of the date the
32 licensee has knowledge of the event:

33 (1) The conviction of the licensee of any felony.

34 (2) The conviction of the licensee of any other crime that is
35 substantially related to the qualifications, functions, and duties of
36 a licensed professional engineer.

37 (3) Any civil action judgment, settlement, arbitration award, or
38 administrative action resulting in a judgment, settlement, or
39 arbitration award against the licensee in any action alleging fraud,
40 deceit, misrepresentation, breach or violation of contract,

1 negligence, incompetence, or recklessness by the licensee in the
2 practice of professional engineering if the amount or value of the
3 judgment, settlement, or arbitration award is fifty thousand dollars
4 (\$50,000) or greater.

5 (b) The report required by subdivision (a) shall be signed by the
6 licensee and set forth the facts that constitute the reportable event.
7 If the reportable event involves the action of an administrative
8 agency or court, the report shall set forth the title of the matter,
9 court or agency name, docket number, and the date the reportable
10 event occurred.

11 (c) A licensee shall promptly respond to oral or written
12 inquiries from the board concerning the reportable events,
13 including inquiries made by the board in conjunction with license
14 renewal.

15 (d) Nothing in this section shall impose a duty upon any
16 licensee to report to the board the occurrence of any of the events
17 set forth in subdivision (a) either by or against any other licensee.

18 (e) Failure of a licensee to report to the board in the time and
19 manner required by this section shall be grounds for disciplinary
20 action.

21 (f) For the purposes of this section, a conviction includes the
22 initial plea, verdict, or finding of guilt; a plea of no contest; or
23 pronouncement of sentence by a trial court even though the
24 conviction may not be final or sentence actually imposed until all
25 appeals are exhausted.

26 6770.1. Within 30 days of entry of a conviction described in
27 paragraphs (1) and (2) of subdivision (a) of Section 6770 or a
28 judgment described in paragraph (3) of subdivision (a) of Section
29 6770 by a court of this state *that has been notified that the*
30 *defendant is a licensee of the board*, the court that rendered the
31 conviction or judgment shall report that fact to the board and
32 provide the board with a copy of the conviction or judgment and
33 any orders or opinions of the court accompanying or ordering the
34 conviction or judgment.

35 6770.2. (a) Within 30 days of payment of all or any portion
36 of any civil action judgment, settlement, or arbitration award
37 described in Section 6770 against a licensee of the board in which
38 the amount or value of the judgment, settlement, or arbitration
39 award is fifty thousand dollars (\$50,000) or greater, any insurer
40 providing professional liability insurance to that licensee shall

report to the board the name of the licensee; the amount or value of the judgment, settlement, or arbitration award; the amount paid by the insurer; and the identity of the payee.

(b) Within 30 days of payment of all or any portion of any civil action judgment, settlement, or arbitration award described in Section 6770 against a licensee of the board in which the amount or value of the judgment, settlement, or arbitration award is fifty thousand dollars (\$50,000) or greater, any state or local government agency that self insures that licensee shall report to the board the name of the licensee; the amount or value of the judgment, settlement, or arbitration award; the amount paid; and the identity of the payee.

6770.3. The requirements of Sections 6770, 6770.1, and 6770.2 shall apply if a party to the civil action, settlement, or arbitration award is or was a sole proprietorship, partnership, firm, corporation, or state or local government agency in which the licensee is or was an owner, partner, member, officer, or employee and is or was the licensee in responsible charge of that portion of the project that was the subject of the civil judgment, settlement, or arbitration award.

6770.4. (a) Notwithstanding any other provision of law, a licensee shall not be considered to have violated a confidential settlement agreement or other confidential agreement by providing a report to the board as required by this article.

6770.5. The board may adopt regulations to further define the reporting requirements of Sections 6770, 6770.1, and 6770.2.

6770.6. This article shall become operative on ~~January 1, 2007~~ July 1, 2006, only if an appropriation is made from the Professional Engineer's and Land Surveyor's Fund for the 2006–07 fiscal year in the annual Budget Act to fund the activities of this article, and sufficient hiring authority is granted to the board pursuant to a budget change proposal to provide sufficient staffing to implement this article.

SEC. 6. Section 6780 is added to the Business and Professions Code, to read:

6780. (a) A petitioner may petition the board for reinstatement or modification of penalty, including reduction, modification, or termination of probation, after the following minimum periods have elapsed from the effective date of the decision ordering the disciplinary action, *or if the order of the*

1 *board or any portion of it is stayed by a court of law, from the date*
2 *the disciplinary action is actually implemented in its entirety:*

3 (1) Except as otherwise provided in this section, at least three
4 years for reinstatement of a certificate that was revoked or
5 surrendered. However, the board may, in its sole discretion,
6 specify in its order of revocation or surrender a lesser period of
7 time that shall be at minimum one year.

8 (2) At least two years for early termination of a probation
9 period of three years or more.

10 (3) At least one year for early termination of a probation period
11 of less than three years.

12 (4) At least one year for reduction or modification of a
13 condition of probation.

14 (b) The board shall notify the Attorney General of the filing of
15 the petition. The petitioner and the Attorney General shall be given
16 timely notice by letter of the time and place of the hearing on the
17 petition, and the petitioner and the Attorney General shall be given
18 the opportunity to present both oral and documentary evidence and
19 argument to the board. The petitioner shall at all times have the
20 burden of proof to establish by clear and convincing evidence that
21 he or she is entitled to the relief sought in the petition.

22 (c) The board itself or an administrative law judge, if one is
23 designated by the board, shall hear the petition and shall prepare
24 a written decision setting forth the reasons supporting the decision.

25 (d) The board may grant or deny the petition or may impose any
26 terms and conditions that it reasonably deems appropriate as a
27 condition of reinstatement or reduction or modification of the
28 penalty.

29 (e) No petition shall be considered while the petitioner is under
30 sentence for any criminal offense, including any period during
31 which the petitioner is on court-imposed probation or parole. No
32 petition shall be considered while there is an accusation or petition
33 to revoke probation pending against the petitioner.

34 (f) The board may, in its discretion, deny without hearing or
35 argument any petition that is filed pursuant to this section within
36 a period of two years from the effective date of a prior decision
37 following a hearing under this section.

38 (g) Judicial review of the board's decision following a hearing
39 under this section may be sought by way of a petition for writ of
40 administrative mandamus pursuant to Section 1094.5 of the Code

of Civil Procedure. The party seeking to overturn the board's decision shall have the burden of proof in any mandamus proceeding. In the mandamus proceeding, if it is alleged that there has been an abuse of discretion because the board's findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the whole record.

(h) The following definitions apply for purposes of this section:

~~(1) "Effective date" means either of the following:~~

~~(A) The effective date of the decision as set by the board.~~

~~(B) If the order or any portion of the order was stayed by the board itself or by a court of law, the date the disciplinary action is actually implemented in its entirety.~~

~~(2)~~

(1) "Certificate" includes certificate of registration or license as a professional engineer; certificates of authority to use the titles "structural engineer," "geotechnical engineer," "soil engineer," "soils engineer," or "consulting engineer;" and certification as an engineer-in-training.

~~(3)~~

(2) "Petitioner" means a professional engineer or an engineer-in-training whose certificate has been revoked, suspended, or surrendered or placed on probation.

SEC. 7. Section 6796.4 is added to the Business and Professions Code, to read:

6796.4. (a) The board shall have the authority to obtain and review criminal history information to determine whether a certificate holder has been convicted of any offense.

(b) In addition to the renewal requirements described in Sections 6795, 6796, 6796.1, 6796.2, and 6796.3, all certificate holders shall, at the time of renewal, furnish a full set of fingerprints for the purposes of conducting a criminal history information check. The board shall use the fingerprints furnished by the certificate holder to obtain criminal history information on the certificate holder from the Department of Justice and the United States Federal Bureau of Investigation, including any available subsequent arrest information.

(c) (1) A certificate holder residing in the state shall submit his or her fingerprints through the electronic format certified by

1 the Department of Justice. With the approval of the executive
2 officer, the certificate holder may submit his or her fingerprints on
3 two classifiable fingerprint cards.

4 (2) A certificate holder residing outside the state may submit
5 his or her fingerprints using the electronic format certified by the
6 Department of Justice. The certificate holder may also submit his
7 or her fingerprints on two classifiable fingerprint cards.

8 (d) (1) If the certificate holder submits his or her fingerprints
9 on classifiable fingerprint cards, the certificate holder shall also
10 submit the fingerprint processing fee to the board. The fingerprint
11 processing fee is that amount charged the board by the Department
12 of Justice.

13 (2) If the certificate holder submits his or her fingerprints
14 through the electronic format certified by the Department of
15 Justice, the certificate holder shall pay the fingerprint processing
16 fee as directed by the enforcement agency operating the electronic
17 system on behalf of the Department of Justice.

18 (e) No renewal or reinstatement shall be processed if the
19 certificate holder fails to submit fingerprints as required by this
20 section. However, if a certificate holder has already submitted
21 fingerprints with an application, as provided in Section 6750.5 or
22 Section 8740.5, or with the renewal or reinstatement of a
23 certificate or license, as provided in this section or Section 8802.3,
24 the certificate holder shall not be required to submit fingerprints
25 with any subsequent renewal or reinstatement.

26 (f) Notwithstanding any other provision of law, the results of
27 any criminal history information check by either state or federal
28 law enforcement authorities shall not be released by the board
29 except in accordance with state and federal requirements.

30 (g) This section shall apply to all renewals, including
31 reinstatements, submitted on or after ~~January 1, 2007~~ *July 1, 2006*.

32 (h) This section shall become operative only if an appropriation
33 is made from the Professional Engineer's and Land Surveyor's
34 Fund for the 2006–07 fiscal year in the annual Budget Act to fund
35 the activities of this section, and sufficient hiring authority is
36 granted to the board pursuant to a budget change proposal to
37 provide staffing to implement this section.

38 SEC. 8. Section 6799 of the Business and Professions Code
39 is amended to read:

6799. (a) The amount of the fees prescribed by this chapter shall be fixed by the board in accordance with the following schedule:

(1) The fee for filing each application for registration as a professional engineer and each application for authority level designation at not more than four hundred dollars (\$400), and for each application for certification as an engineer-in-training at not more than one hundred dollars (\$100).

(2) The temporary registration fee for a professional engineer at not more than 25 percent of the application fee in effect on the date of application.

(3) The renewal fee for each branch of professional engineering in which registration is held, and the renewal fee for each authority level designation held, at no more than the professional engineer application fee currently in effect.

(4) The fee for a retired license at not more than 50 percent of the professional engineer application fee in effect on the date of application.

(5) The delinquency fee at not more than 50 percent of the renewal fee in effect on the date of reinstatement.

(6) The fingerprint processing fee is the amount charged the board by the Department of Justice.

(7) The board shall establish by regulation an appeal fee for examination. The regulation shall include provisions for an applicant to be reimbursed the appeal fee if the appeal results in passage of examination. The fee charged shall be no more than the costs incurred by the board.

(8) All other document fees are to be set by the board by rule.

(b) Applicants wishing to be examined in more than one branch of engineering shall be required to pay the additional fee for each examination after the first.

SEC. 9. Section 8710 of the Business and Professions Code is amended to read:

8710. (a) The Board for Professional Engineers and Land Surveyors is vested with power to administer the provisions and requirements of this chapter, and may make and enforce rules and regulations that are reasonably necessary to carry out its provisions.

(b) The board may adopt rules and regulations of professional conduct that are not inconsistent with state and federal law. The

1 rules and regulations may include definitions of incompetence and
2 negligence. Every person who holds a license or certificate issued
3 by the board pursuant to this chapter, or a license or certificate
4 issued to a civil engineer pursuant to Chapter 7 (commencing with
5 Section 6700), shall be governed by these rules and regulations.

6 (c) This section shall become inoperative on July 1, 2006, and,
7 as of January 1, 2007, is repealed, unless a later enacted statute,
8 which becomes effective on or before January 1, 2007, deletes or
9 extends the dates on which it becomes inoperative and is repealed.
10 The repeal of this section shall render the board subject to the
11 review required by Division 1.2 (commencing with Section 473).

12 SEC. 10. Section 8740.5 is added to the Business and
13 Professions Code, to read:

14 8740.5. (a) The board shall have the authority to obtain and
15 review criminal history information to determine whether an
16 applicant has been convicted of any offense.

17 (b) Each applicant for certification as a land
18 surveyor-in-training or licensure as a land surveyor shall, at the
19 time of application, furnish a full set of fingerprints for the
20 purposes of conducting a criminal history information check. The
21 board shall use the fingerprints furnished by the applicant to obtain
22 criminal history information on the applicant from the Department
23 of Justice and the United States Federal Bureau of Investigation,
24 including any available subsequent arrest information.

25 (c) (1) An applicant residing in the state shall submit his or her
26 fingerprints through the electronic format certified by the
27 Department of Justice. With the approval of the executive officer,
28 the applicant may submit his or her fingerprints on two classifiable
29 fingerprint cards.

30 (2) An applicant residing outside the state may submit his or her
31 fingerprints using the electronic format certified by the
32 Department of Justice. The applicant may also submit his or her
33 fingerprints on two classifiable fingerprint cards.

34 (d) (1) If the applicant submits his or her fingerprints on
35 classifiable fingerprint cards, the applicant shall also submit the
36 fingerprint processing fee to the board. The fingerprint processing
37 fee is that amount charged the board by the Department of Justice.

38 (2) If the applicant submits his or her fingerprints through the
39 electronic format certified by the Department of Justice, the
40 applicant shall pay the fingerprint processing fee as directed by the

1 enforcement agency operating the electronic system on behalf of
2 the Department of Justice.

3 (e) No application shall be processed if the applicant fails to
4 submit fingerprints as required by this section. However, if an
5 applicant has already submitted fingerprints with a previous
6 application, as provided in this section or Section 6750.5, or with
7 the renewal of a certificate or license, as provided in Section
8 6796.4 or 8802.3, the applicant shall not be required to submit
9 fingerprints with any subsequent application.

10 (f) Notwithstanding any other provision of law, the results of
11 any criminal history information check by either state or federal
12 law enforcement authorities shall not be released by the board
13 except in accordance with state and federal requirements.

14 (g) This section shall apply to all applications, including those
15 applications submitted pursuant to Sections 8746 and 8748,
16 submitted on or after ~~January 1, 2007~~ *July 1, 2006*.

17 (h) This section shall become operative only if an appropriation
18 is made from the Professional Engineer's and Land Surveyor's
19 Fund for the 2006–07 fiscal year in the annual Budget Act to fund
20 the activities of this section, and sufficient hiring authority is
21 granted to the board pursuant to a budget change proposal to
22 provide staffing to implement this section.

23 SEC. 11. Article 5.7 (commencing with Section 8776) is
24 added to Chapter 15 of Division 3 of the Business and Professions
25 Code, to read:

26
27 Article 5.7. Reporting Requirements
28

29 8776. (a) A licensee shall report to the board in writing the
30 occurrence of any of the following events that occurred on or after
31 ~~January 1, 2007~~ *July 1, 2006*, within 90 days of the date the
32 licensee has knowledge of the event:

33 (1) The conviction of the licensee of any felony.

34 (2) The conviction of the licensee of any other crime that is
35 substantially related to the qualifications, functions, and duties of
36 a licensed land surveyor.

37 (3) Any civil action judgment, settlement, arbitration award, or
38 administrative action resulting in a judgment, settlement, or
39 arbitration award against the licensee in any action alleging fraud,
40 deceit, misrepresentation, breach or violation of contract,

1 negligence, incompetence, or recklessness by the licensee in the
2 practice of land surveying if the amount or value of the judgment,
3 settlement, or arbitration award is fifty thousand dollars (\$50,000)
4 or greater.

5 (b) The report required by subdivision (a) shall be signed by the
6 licensee and set forth the facts that constitute the reportable event.
7 If the reportable event involves the action of an administrative
8 agency or court, the report shall set forth the title of the matter,
9 court or agency name, docket number, and the dates the reportable
10 event occurred.

11 (c) A licensee shall promptly respond to oral or written
12 inquiries from the board concerning the reportable events,
13 including inquiries made by the board in conjunction with license
14 renewal.

15 (d) Nothing in this section shall impose a duty upon any
16 licensee to report to the board the occurrence of any of the events
17 set forth in subdivision (a) either by or against any other licensee.

18 (e) Failure of a licensee to report to the board in the time and
19 manner required by this section shall be grounds for disciplinary
20 action.

21 (f) For purposes of this section, a conviction includes the initial
22 plea, verdict, or finding of guilt; a plea of no contest; or
23 pronouncement of sentence by a trial court even though the
24 conviction may not be final or sentence actually imposed until all
25 appeals are exhausted.

26 8776.1. Within 30 days of entry of a conviction described in
27 paragraphs (1) and (2) of subdivision (a) of Section 8776 or a
28 judgment described in paragraph (3) of subdivision (a) of Section
29 8776 by a court of this state *that has been notified that the*
30 *defendant is a licensee of the board*, the court that rendered the
31 conviction or judgment shall report that fact to the board and
32 provide the board with a copy of the conviction or judgment and
33 any orders or opinions of the court accompanying or ordering the
34 conviction or judgment.

35 8776.2. (a) Within 30 days of payment of all or any portion
36 of any civil action judgment, settlement, or arbitration award
37 described in Section 8776 against a licensee of the board in which
38 the amount or value of the judgment, settlement, or arbitration
39 award is fifty thousand dollars (\$50,000) or greater, any insurer
40 providing professional liability insurance to that licensee shall

1 report to the board the name of the licensee; the amount or value
2 of the judgment, settlement, or arbitration award; the amount paid
3 by the insurer; and the identity of the payee.

4 (b) Within 30 days of payment of all or any portion of any civil
5 action judgment, settlement, or arbitration award described in
6 Section 8776 against a licensee of the board in which the amount
7 or value of the judgment, settlement, or arbitration award is fifty
8 thousand dollars (\$50,000) or greater, any state or local
9 government agency that self insures that licensee shall report to the
10 board the name of the licensee; the amount or value of the
11 judgment, settlement, or arbitration award; the amount paid; and
12 the identity of the payee.

13 8776.3. The requirements of Sections 8776, 8776.1, and
14 8776.2 shall apply if a party to the civil action, settlement, or
15 arbitration award is or was a sole proprietorship, partnership, firm,
16 corporation, or state or local government agency in which the
17 licensee is or was an owner, partner, member, officer, or employee
18 and is or was the licensee in responsible charge of that portion of
19 the project that was the subject of the civil judgment, settlement,
20 or arbitration award.

21 8776.4. (a) Notwithstanding any other provision of law, a
22 licensee shall not be considered to have violated a confidential
23 settlement agreement or other confidential agreement by
24 providing a report to the board as required by this article.

25 8776.5. The provisions of this article apply to a civil engineer
26 licensed under Chapter 7 (commencing with Section 6700) prior
27 to January 1, 1982, if the civil action judgment, settlement, or
28 arbitration award relates to the practice of professional land
29 surveying.

30 8776.6. The board may adopt regulations to further define the
31 reporting requirements of Sections 8776, 8776.1, and 8776.2.

32 8776.7. This article shall become operative on ~~January 1,~~
33 ~~2007~~ *July 1, 2006*, only if an appropriation is made from the
34 Professional Engineer's and Land Surveyor's Fund for the
35 2006–07 fiscal year in the annual Budget Act to fund the activities
36 of this article, and sufficient hiring authority is granted to the board
37 pursuant to a budget change proposal to provide sufficient staffing
38 to implement this article.

39 SEC. 12. Section 8785 is added to the Business and
40 Professions Code, to read:

1 8785. (a) A petitioner may petition the board for
2 reinstatement or modification of penalty, including reduction,
3 modification, or termination of probation, after the following
4 minimum periods have elapsed from the effective date of the
5 decision ordering the disciplinary action, *or if the order of the*
6 *board or any portion of it is stayed by a court of law, from the date*
7 *the disciplinary action is actually implemented in its entirety:*

8 (1) Except as otherwise provided in this section, at least three
9 years for reinstatement of a license or certificate that was revoked
10 or surrendered. However, the board may, in its sole discretion,
11 specify in its order of revocation or surrender a lesser period of
12 time that shall be at minimum one year.

13 (2) At least two years for early termination of a probation
14 period of three years or more.

15 (3) At least one year for early termination of a probation period
16 of less than three years.

17 (4) At least one year for reduction or modification of a
18 condition of probation.

19 (b) The board shall notify the Attorney General of the filing of
20 the petition. The petitioner and the Attorney General shall be given
21 timely notice by letter of the time and place of the hearing on the
22 petition, and the petitioner and the Attorney General shall be given
23 the opportunity to present both oral and documentary evidence and
24 argument to the board. The petitioner shall at all times have the
25 burden of proof to establish by clear and convincing evidence that
26 he or she is entitled to the relief sought in the petition.

27 (c) The board itself or an administrative law judge, if one is
28 designated by the board, shall hear the petition and shall prepare
29 a written decision setting forth the reasons supporting the decision.

30 (d) The board may grant or deny the petition or may impose any
31 terms and conditions that it reasonably deems appropriate as a
32 condition of reinstatement or reduction or modification of the
33 penalty.

34 (e) No petition shall be considered while the petitioner is under
35 sentence for any criminal offense, including any period during
36 which the petitioner is on court-imposed probation or parole. No
37 petition shall be considered while there is an accusation or petition
38 to revoke probation pending against the petitioner.

39 (f) The board may, in its discretion, deny without hearing or
40 argument any petition that is filed pursuant to this section within

a period of two years from the effective date of a prior decision following a hearing under this section.

(g) Judicial review of the board's decision following a hearing under this section may be sought by way of a petition for writ of administrative mandamus pursuant to Section 1094.5 of the Code of Civil Procedure. The party seeking to overturn the board's decision shall have the burden of proof in any mandamus proceeding. In the mandamus proceeding, if it is alleged that there has been an abuse of discretion because the board's findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the whole record.

~~(h) The following definitions apply for purposes of this section:~~

~~(1) "Effective date" means either of the following:~~

~~(A) The effective date of the decision as set by the board.~~

~~(B) If the order or any portion of the order was stayed by the board itself or by a court of law, the date the disciplinary action is actually implemented in its entirety.~~

~~(2) "Petitioner"~~

(h) For the purposes of this section, "petitioner" means a professional land surveyor or licensed civil engineer or a land surveyor-in-training whose license or certificate has been revoked, suspended, or surrendered or placed on probation.

SEC. 13. Section 8802.3 is added to the Business and Professions Code, to read:

8802.3. (a) The board shall have the authority to obtain and review criminal history information to determine whether a licenseholder has been convicted of any offense.

(b) In addition to the renewal requirements described in Sections 8775.3, 8801, 8802, 8802.1, 8802.2, and 8803, all licenseholders shall, at the time of renewal, furnish a full set of fingerprints for the purposes of conducting a criminal history information check. The board shall use the fingerprints furnished by the licenseholder to obtain criminal history information on the licenseholder from the Department of Justice and the United States Federal Bureau of Investigation, including any available subsequent arrest information.

(c) (1) A licenseholder residing in the state shall submit his or her fingerprints through the electronic format certified by the

1 Department of Justice. With the approval of the executive officer,
2 the licenseholder may submit his or her fingerprints on two
3 classifiable fingerprint cards.

4 (2) A licenseholder residing outside the state may submit his or
5 her fingerprints using the electronic format certified by the
6 Department of Justice. The licenseholder may also submit his or
7 her fingerprints on two classifiable fingerprint cards.

8 (d) (1) If the licenseholder submits his or her fingerprints on
9 classifiable fingerprint cards, the licenseholder shall also submit
10 the fingerprint processing fee to the board. The fingerprint
11 processing fee is that amount charged the board by the Department
12 of Justice.

13 (2) If the licenseholder submits his or her fingerprints through
14 the electronic format certified by the Department of Justice, the
15 licenseholder shall pay the fingerprint processing fee as directed
16 by the enforcement agency operating the electronic system on
17 behalf of the Department of Justice.

18 (e) No renewal or reinstatement shall be processed if the
19 licenseholder fails to submit fingerprints as required by this
20 section. However, if a licenseholder has already submitted
21 fingerprints with an application, as provided in Section 6750.5 or
22 Section 8740.5, or with the renewal or reinstatement of a
23 certificate, as provided in Section 6796.3, the licenseholder shall
24 not be required to submit fingerprints with any subsequent renewal
25 or reinstatement.

26 (f) Notwithstanding any other provision of law, the results of
27 any criminal history information check by either state or federal
28 law enforcement authorities shall not be released by the board
29 except in accordance with state and federal requirements.

30 (g) This section shall apply to all renewals, including
31 reinstatements, submitted on or after ~~January 1, 2007~~ *July 1, 2006*.

32 (h) This section shall become operative only if an appropriation
33 is made from the Professional Engineer's and Land Surveyor's
34 Fund for the 2006–07 fiscal year in the annual Budget Act to fund
35 the activities of this section, and sufficient hiring authority is
36 granted to the board pursuant to a budget change proposal to
37 provide staffing to implement this section.

38 SEC. 14. Section 8805 of the Business and Professions Code
39 is amended to read:

1 8805. The amount of the fees prescribed by this chapter shall
2 be fixed by the board in accordance with the following schedule:

3 (a) The fee for filing each application for licensure as a land
4 surveyor at not more than four hundred dollars (\$400), and for
5 each application for certification as a land surveyor-in-training
6 (LSIT) at not more than one hundred dollars (\$100).

7 (b) The temporary registration fee for a land surveyor at not
8 more than 25 percent of the application fee in effect on the date of
9 application.

10 (c) The renewal fee for a land surveyor at not more than the
11 application fee.

12 (d) The fee for a retired license at not more than 50 percent of
13 the professional land surveyor application fee in effect on the date
14 of application.

15 (e) The delinquency fee at not more than 50 percent of the
16 renewal fee in effect on the date of reinstatement.

17 (f) The fingerprint processing fee is the amount charged the
18 board by the Department of Justice.

19 (g) The board shall establish by regulation an appeal fee for
20 examination. The regulation shall include provisions for an
21 applicant to be reimbursed the appeal fee if the appeal results in
22 passage of examination. The fee shall be no more than the costs
23 incurred by the board.

24 (h) All other document fees are to be set by the board by rule.

25 SEC. 15. No reimbursement is required by this act pursuant
26 to Section 6 of Article XIII B of the California Constitution for
27 certain costs that may be incurred by a local agency or school
28 district because in that regard this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.

34 However, notwithstanding Section 17610 of the Government
35 Code, if the Commission on State Mandates determines that this
36 act contains other costs mandated by the state, reimbursement to
37 local agencies and school districts for those costs shall be made
38 pursuant to Part 7 (commencing with Section 17500) of Division
39 4 of Title 2 of the Government Code. If the statewide cost of the
40 claim for reimbursement does not exceed one million dollars

1 (\$1,000,000), reimbursement shall be made from the State
2 Mandates Claims Fund.

3 SEC. 16. Section 1.5 of this bill incorporates amendments to
4 Section 144 of the Business and Professions Code proposed by
5 both this bill and SB 1915. It shall only become operative if (1)
6 both bills are enacted and become effective on or before January
7 1, 2005, (2) each bill amends Section 144 of the Business and
8 Professions Code, and (3) this bill is enacted after SB 1915, in
9 which case Section 144 of the Business and Professions Code, as
10 amended by SB 1915, shall remain operative only until the
11 operative date of this bill, at which time Section 1.5 of this bill shall
12 become operative, and Section 1 of this bill shall not become
13 operative.

